IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5690/06 & 5691/06

Chandrakant Mataprasad Pandey, .. Petitioner.
Vs
Sabhapati Mataprasad Pandey & ors .. Respondents

Mr R.B.Singh, for the petitioner.
Mr M.B.Jadhav i/b Mr R.R.Mishra, for the respondents.

CORAM : D.B.BHOSALE,J.
DATE : 28.08.2006

PC:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. The respondents waive service. By consent, rule is heard forthwith.

3. In the first writ petition (Writ Petition No.5690 of 2006), the petitioner has impugned the following order:

> "An application is submitted on behalf of the plaintiff stating that the time for payment of Additional Court Fees has expired on 26.6.2006 after order was passed on 12.6.2006. Taking this into consideration suit ought to be dismissed for noncompliance. Learned Advocate on behalf of defendant no.3 objected to the adjournment. Secondly he has submitted that no grounds are made in the application. My staff informs me that the R & P was sent for certified copy soon after the order was pronounced on 12.6.2006. Therefore the only prayer made by plaintiff is that the delay was caused due to nonavailability of certified copy. No other grounds as stated in the application. Hence no adjournment. Therefore, the suit ought to be dismissed for

> noncompliance of order 12.6.2006. Application is disposed off and filed. Hence suit is dismissed for noncompliance of the order dated 12.6.2006. R & P be sent to the record Department."

In the second writ petition (Writ Petition No.5691/2006) the petitioner has challenged the order dated 12.6.2006 by which the following preliminary issues were framed:

> "1. Whether the plaintiff has valued the suit property correctly and whether this Court will have the jurisdiction to try and entertain the suit?
>
> 2. Does the plaintiff prove that by virtue of the family settlement whether this court have jurisdiction to try and entertain this suit?"

Insofar as the first issue is concerned, the Court has answered, directing the petitioner-plaintiff to make good the difference in the valuation and pay the court fees accordingly. Insofar as the second issue is concerned, the learned Judge has held that the said issue can be decided at appropriate stage. Mr Singh, learned counsel for the petitioner, has stated that he has instructions not to press the second writ petition (Writ Petition No.5691/06) and that he will comply with the order dated 12.6.2006 within two weeks from today. That petition is disposed of as not pressed. In view of the statement made by the learned counsel, I am satisfied that the first writ petition can also be

disposed of by the following order:

(a) The petitioner shall comply with the order dated 12.6.2006 within two weeks from today. On the petitioner complying with the said order the suit shall stand restored to file. The trial Court shall decide the said suit bearing S.C.No.1016 of 2005 on merits in accordance with law. All contentions in the second writ petition are kept open to be raised at appropriate stage.

(b) With these observations, both the petitions are disposed of.

(D.B.BHOSALE,J.)